



# Why Judges Should Advocate for Collaborative Law

By the Honorable Hugh E. Starnes, 20th Judicial Circuit

Collaborative Law has emerged in the last few years to the forefront of family law practice. Many family law attorneys and other professionals have taken training courses to learn what the collaborative law process is and how to practice it. As most practitioners are now aware, this process involves the parties and their attorneys entering into an agreement to negotiate outside the court process in a collaborative manner, using mediation-type skills and utilizing other professionals such as psychologists and CPAs to assist the parties in resolving their issues. The agreement provides that if anyone seeks court intervention, both attorneys must withdraw from representing their client. Thus, all the participants are committing to work very hard and creatively to craft a resolution in a non-adversarial manner.

For a good while in Florida, most of what was occurring was lawyers getting lots of training, without too many actual cases being handled through this process. This was probably because the process was new and challenging, and the supply of lawyers comfortable with the process was relatively small. In the last two or three years, my impression is that cases are being handled regularly around the State in the collaborative process and are being successfully concluded without court intervention and decision-making. I think that the potential, however, is for a far greater number of cases to be successfully resolved using this innovative process. Even though this process of resolution occurs outside the court system, I believe the judiciary has a big stake in its' widespread use and success. Here's why.

Let's see. These parties want to work out all their problems without any contested court hearings or court involvement? How quickly can a Judge say this is a wonderful process? Anything that removes cases

from our docket is a godsend.

There is a deeper reason than pure docket salvation for Judges to get behind this process, however. Attorneys who use this process must get advanced training in positive negotiation skills: problem solving techniques and learning how to create win-win solutions. They must then work with their clients and the other (not "opposing") attorney in a manner that seeks to overcome distrust, anger, and all the harmful emotions that infect family law cases. The result is they build skills for working cooperatively and successfully. This should portend well for the handling of other cases that do come to court. We judges should expect the collaborative experience to carry over to cases that are not handled in the collaborative process, but still are capable of cooperative negotiation in the court setting. Wouldn't everybody's life be more enjoyable? Courtesy is infectious, particularly when combined with satisfied clients, fewer unpaid bills, and fewer complaints to the Bar. The emotional health of judges is one of the ultimate beneficiaries of this process, because it encourages lawyers to increase their problem solving skills. They will, hopefully, use these skills to resolve other cases they might otherwise litigate in an adversarial manner.

Another beneficial spin-off for judges is that the process brings in mental health professionals to assist in the resolution of the cases. Many mental health professionals are refusing to take family law parenting evaluation work because of the fear of malpractice suits and harsh, unpleasant cross examination techniques. The collaborative process essentially removes these concerns and should allow the return of these important professionals to the family law practice. Think of the role modeling and education they can give attorneys when they

work side by side to help clients shed their harmful emotions and arrive at a reasonable settlement. These professionals like being in a problem-solving atmosphere. They have much to offer the parties, and much to teach the attorneys about bringing resolution for difficult clients.

Collaborative law also attracts financial professionals who prefer to perform their duties in a neutral capacity. Often, they can attack the financial issues in a much more efficient and effective manner than attorneys who are not usually trained in finance, interpretation of financial records, budgeting, and projection of cash flow and net worth figures. The positive relationships that attorneys develop with financial professionals could have a beneficial effect in adversarial cases on reducing discovery disputes and making more effective financial presentations that will allow wiser decisions by the judge on tough issues like alimony and complex equitable distributions.

A successful collaborative case spares children the anguish of parents who fight forever. It also allows the professionals to force the parties to focus on the needs of the children more than on their own needs. We all know now that continued conflict between the parents injures children in powerful and far reaching ways. Judges especially should recognize the need to protect the children and to help in raising children who grow up to be emotionally healthy, productive citizens. These are also the cases that have a high risk of returning to Court in a post judgment motion. Using the collaborative process should reduce the potential for post judgment motions. The ability to craft a long-range solution which the parties themselves fashion pays even greater dividends in minimizing the potential for continuing

Finally, the collaborative process increases interaction between the professions and that will lead to a

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## Collaborative Law

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more intelligent and cooperative culture among all the local professionals. Ultimately, the goal is for all the professionals to develop such high quality skills that they will perform in a cooperative manner in virtually all their cases, even those without the strict discipline of a collaborative agreement that says "stay out of court or withdraw." This may be the greatest boon for judges in the flourishing of the collaborative process: a new culture in the pro-


fessional community that endorses and practices in a more humane and cooperative manner wherever possible. Achievement of this ultimate goal will lead to ever more flexible opportunities for cooperation that assists the court, the parties, the children, and society.

So, clearly, a judge should encourage practice in the collaborative process. But how can the judge affect a process which operates wholly outside the judicial system? There are several ways. One of the most powerful is to help promote and to attend a training session for collab-

orative law. Lawyers' professional lives depend on understanding how the judges they practice before think and make decisions. My experience is that lawyers relish participating with judges in this type of educational setting. They gain more insight in the workings of the judicial mind, and it benefits their practice and increases the skill level of their court presentations. If you lead, they will follow! Participate in a panel at a local seminar on the benefits of the collaborative process, or organize a brown bag luncheon to discuss its' use. Write an article for your local Bar Association newsletter. Ask local attorneys and other professionals who know something about collaborative law to make a presentation to the family law judges and invite local family lawyers to attend. Ask lawyers who have successfully completed collaborative cases to give a report on how they achieved success and what they and their clients thought about the process.

The bottom line is this: Show interest in the collaborative process and the local professionals are likely to quickly follow your lead. You, the Judge, may ultimately reap the greatest reward!

*The Honorable Hugh E. Starnes, of the Twentieth Judicial Circuit (1978-present), received his B.A. and L.L.B. from the University of Florida. He was Chief Judge (1995-1999); Family Law Bench (1985-1996) (February 2000 - present); and was selected outstanding jurist for the State of Florida by the Florida Chapter of the American Academy of Matrimonial Lawyers (1992). Judge Starnes was appointed by the Florida Supreme Court as a member of the Florida Supreme Court Committee on Families and Children in the Courts (1994-2005); and is a member of the Board of Directors of AFCC and FLAFCC, and Past-President of AFCC and FLAFCC.*



## "Whine" of the Month!

by Robyn Vines, Esq.

One "Whiner" comments: "Does due process apply to pre-trial evidentiary hearings? We call our trials "final hearings" and we must disclose witnesses and exhibits before hearing'/trial'. However, there is no such requirement of disclosure in advance of other, often several hour, evidentiary hearings?"

Got a "whine?" Send them to [Robyn.Vines@ruden.com](mailto:Robyn.Vines@ruden.com).



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